



**DEPARTMENT OF HOMELAND SECURITY**

**Coast Guard**

**33 CFR Part 165**

**[Docket Number USCG-2016-0451]**

**RIN 1625-AA00**

**Safety Zone; South Branch of the Chicago River and Chicago Sanitary and Ship Canal,  
Chicago, IL**

**AGENCY:** Coast Guard, DHS.

**ACTION:** Temporary Final Rule

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**SUMMARY:** The Coast Guard is establishing a temporary safety zone on the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal. This action is necessary to protect spectators, participants, and vessels from the hazards associated with the Tough Cup event on these navigable waters in Chicago, IL, on September 24, 2016. This regulation prohibits persons and vessels from being in the safety zone unless authorized by the Captain of the Port Lake Michigan or a designated representative.

**DATES:** This rule is effective from 6:30 a.m. to 1 p.m. on September 24, 2016.

**ADDRESSES:** To view documents mentioned in this preamble as being available in the docket, go to <http://www.regulations.gov>, type USCG-2016-0451 in the "SEARCH" box and click "SEARCH." Click on Open Docket Folder on the line associated with this rule.

**FOR FURTHER INFORMATION CONTACT:** If you have questions on this rule, call or email LT Lindsay Cook, Marine Safety Unit Chicago, U.S. Coast Guard; telephone (630) 986-2155, email Lindsay.N.Cook@uscg.mil.

**SUPPLEMENTARY INFORMATION:**

**I. Table of Abbreviations**

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	<b>Federal Register</b>
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

**II. Background Information and Regulatory History**

On December 27, 2015, the Coast Guard received an Application for Marine Event for the Tough Cup event that will be held from 6:30 a.m. to 1 p.m. on September 24, 2016, on the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal between the Illinois Northern Bridge and the Loomis Street Highway Bridge. In response, on July 1, 2016, the Coast Guard published a notice of proposed rulemaking (NPRM) titled “Safety Zone; South Branch of the Chicago River and Chicago Sanitary and Ship Canal, Chicago, IL” (81 FR 43178). There we stated why we issued the NPRM, and invited comments on our proposed regulatory action related to this event. During the comment period that ended July 31, 2016, we received two comments.

We are issuing this rule, and under 5 U.S.C. 553(d)(3), the Coast Guard finds that good cause exists for making it effective less than 30 days after publication in the **Federal Register**. To provide an opportunity for comment, as opposed to not issuing an NPRM, we issued the NPRM knowing it would be impracticable not to make a final rule effective less than 30 days after it is published. Delaying the effective date of this rule to wait for a comment period to run would be

impracticable because it would inhibit the ability to protect the public and vessels from the hazards associated with a race involving personal watercraft to take place on September 24, 2016.

### **III. Legal Authority and Need for Rule**

The Coast Guard is issuing this rule under authority in 33 U.S.C. 1231. The Captain of the Port Lake Michigan (COTP) has determined that the potential hazards associated with vessels transiting through a narrow and congested section of the river during the Tough Cup event will pose concerns for all vessels navigating in the area. The purpose of this rule is to ensure the safety of spectators, vessels participating in the event and all vessels operating in the vicinity of the scheduled event.

### **IV. Discussion of Comments, Changes, and the Rule**

As noted above, we received two comments on our NPRM published July 1, 2016. One comment stated concerns with the notification to the public being sufficient for the proposed rule. The Coast Guard has provided notice required by the Administrative Procedures Act (5 U.S.C. 553) and will also provide notification by issuing a Broadcast Notice to Mariners via VHF-FM marine channel 16. To further address the concern of sufficient notification, the Coast Guard will include a notification in the Local Notice to Mariners publication. The second comment received was supportive of the event and related waterway restriction. There is one change in the regulatory text of this rule from the proposed rule in the NPRM to include the additional notification in the Local Notice to Mariners publication. This rule establishes a safety zone from 6:30 a.m. to 1 p.m. on September 24, 2016. The safety zone will cover all navigable waters on the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal between the Illinois Northern Bridge and the Loomis Street Highway Bridge in Chicago, IL. The duration of the zone is intended to ensure the safety of vessels and these navigable waters before, during, and

after the scheduled Tough Cup event. No vessel or person will be permitted to enter the safety zone without obtaining permission from the COTP or a designated representative.

## **V. Regulatory Analyses**

We developed this rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders, and we discuss First Amendment rights of protestors.

### **A. Regulatory Planning and Review**

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility. This rule has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, it has not been reviewed by the Office of Management and Budget.

We conclude that this rule is not a significant regulatory action because we anticipate that it will have minimal impact on the economy, will not interfere with other agencies, will not adversely alter the budget of any grant or loan recipients, and will not raise any novel legal or policy issues. The safety zone created by this rule will be relatively small and enforced for a short duration on the one day this rule will be in effect to ensure safety of spectators and participants at this scheduled event. Moreover, the Coast Guard will issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the safety zone, a notification in the Local Notice to Mariners publication, and the rule would allow vessels to seek permission to enter the zone.

### **B. Impact on Small Entities**

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal

agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received zero comments from the Small Business Administration on this rulemaking. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section V.A above, this rule will not have a significant economic impact on any vessel owner or operator. Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency’s responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

### C. Collection of Information

This rule will not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

#### E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### F. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969(42 U.S.C. 4321-4370f), and have determined that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This rule involves a safety zone lasting six and a half hours that will prohibit entry within a section of the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal. It is categorically excluded from further review under paragraph 34g of Figure 2-1 of the Commandant Instruction. An environmental analysis checklist supporting this determination and a Categorical Exclusion Determination are available in the docket where indicated under ADDRESSES. We seek any comments or information that may lead to the discovery of a significant environmental impact from this rule.

#### G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### **List of Subjects in 33 CFR Part 165**

Harbors, Marine safety, Navigation (water), Reporting and record keeping requirements, Security measures, Waterways .

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 165 as follows:

**PART 165- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS**

1. The authority citation for part 165 continues to read as follows:

**Authority:** 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, and 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add § 165.T09-0451 to read as follows:

§ 165.T09-0451 Safety Zone; South Branch of the Chicago River and Chicago Sanitary and Ship Canal, Chicago, IL.

(a) Location. All waters of the South Branch of the Chicago River and the Chicago Sanitary and Ship Canal between the Illinois Northern Bridge and the Loomis Street Highway Bridge.

(b) Effective and enforcement period. This rule will be effective from 6:30 a.m. to 1:00 p.m. on September 24, 2016 and will be enforced from 6:30 a.m. to 1:00 p.m. on September 24, 2016.

(c) Regulations. (1) In accordance with the general regulations in §165.23 of this part, entry into, transiting, or anchoring within this safety zone is prohibited unless authorized by the Captain of the Port Lake Michigan or a designated on-scene representative.

(2) This safety zone is closed to all vessel traffic, except as may be permitted by the Captain of the Port Lake Michigan or a designated on-scene representative.

(3) The “on-scene representative” of the Captain of the Port Lake Michigan is any Coast Guard commissioned, warrant or petty officer who has been designated by the Captain of the Port Lake Michigan to act on his or her behalf.

(4) Vessel operators desiring to enter or operate within the safety zone shall contact the Captain of the Port Lake Michigan or an on-scene representative to obtain permission to do so. The Captain of the Port Lake Michigan or an on-scene representative may be contacted via VHF Channel 16. Vessel operators given permission to enter or operate in the safety zone must comply



with all directions given to them by the Captain of the Port Lake Michigan, or an on-scene representative.

Dated: September 19, 2016.

A.B. COCANOUR,

Captain, U. S. Coast Guard,

Captain of the Port Lake Michigan.

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